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10/069,945	09/19/2002	Petrus Basson	P.19477/MAJR	4581

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EXAMINER

WILKINS III, HARRY D

ART UNIT	PAPER NUMBER
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1742

DATE MAILED: 11/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/069,945

Applicant(s)

BASSON ET AL.

Examiner

Harry D Wilkins, III

Art Unit

1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 50-81 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 50-81 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 50, 66-69, 71-73, 80 and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emmett, Jr et al (US 5,007,620) in view of Applicant's admission of prior art and Eppstein et al (US 4,680,267).

Emmett, Jr et al teach (see abstract) a method of recovering a metal (zinc, see col. 1, lines 61-64) from a metal bearing sulfide mineral slurry, including the steps of subjecting the slurry in a reactor to a bioleaching process at temperatures up to 46°C (see col. 21, lines 10-26), supplying a feed gas containing oxygen (air, see fig. 22, which contains 21% oxygen), and recovering metal from the bioleach residue (see col. 1, lines 38-60).

The range of oxygen content of the air is so close to the range of the prior art (e.g.- 21.0001 wt% vs. 21 wt%) that one of ordinary skill in the art would have expected the two oxygen-containing feed gases to have the same properties/effects upon the method. See MPEP 2144.05.

Thus, Emmett, Jr. et al do not teach the step of controlling the dissolved oxygen concentration in the slurry to a desired level by controlling at least one of the oxygen content of the feed gas, the supply of feed gas or the rate of feed of slurry.

Applicant admits as prior art (see paragraphs 3-6) that the amount of oxygen in the slurry is the rate limiting variable of the bioleaching process when conducted above 40°C.

Eppstein et al teach (see abstract) control means for adjusting the dissolved oxygen concentration in a bioreactor, which is measured by an oxygen sensor, that controls the oxygen content of the feed gas.

Therefore, it would have been obvious to one of ordinary skill in the art to have added the controlling step of Eppstein et al to the method of Emmett, Jr et al because Applicant's admission teaches that dissolved oxygen controls the rate of the reaction and the controlling step of Eppstein et al can control the dissolved oxygen level to a desired high amount to facilitate the reaction.

Regarding the actual concentration of dissolved oxygen in the slurry, it would have been within the expected skill of a routineer in the art to have optimized the concentration of oxygen in the slurry in order to maximize the reaction rate. Emmett, Jr.

et al describe (see figs. 24 and 28) oxygen concentrations ranging from 1 to 4 mg/L ( $1.0 \times 10^{-3} \text{ kg/m}^3$  to  $4.0 \times 10^{-3} \text{ kg/m}^3$ ).

Regarding claim 66, Emmett, Jr. et al teach (see fig. 22) using air as the feed gas. However, it would have been within the expected skill of a routineer in the art to have used a higher percentage of oxygen in the feed gas, since a higher amount of oxygen in the feed gas would lead to a high dissolved oxygen amount and thus a faster reaction rate.

Regarding claims 67 and 68, Emmett, Jr. et al do not expressly teach controlling the carbon content of the slurry. However, as the carbon content directly relies on the carbon dioxide present in the slurry, and the carbon dioxide affects the bioleach process, it would have been obvious to one of ordinary skill in the art to have controlled the amount of carbon in the slurry. Means similar to the oxygen control of Eppstein et al would have been utilized. It would have been within the expected skill of a routineer in the art to have found the optimum amount of carbon dioxide in the feed gas for producing the best bioleaching results.

Regarding claims 69 and 71, Emmett, Jr. et al teach (see col. 21, lines 10-26) performing the bioleaching at up to 46°C using mesophile microorganisms.

Regarding claims 72 and 73, Emmett, Jr. et al are silent as to the actual bacterium utilized in the process. However, it would have been within the expected skill of a routineer in the art to have selected an appropriate bacterium for performing the operation, such as *Thiobacillus prosperus*.

Regarding claim 80, Emmett, Jr. et al teach (see fig. 22) a plant for recovering zinc that includes a reactor vessel (232), a source which feeds the slurry to the vessel, an oxygen source (air compressor) supplying gas to the slurry, and a recovery system to recover zinc from the bioleach residue. Thus, Emmett, Jr. et al fail to teach the device that measures the dissolved oxygen concentration and the control mechanism.

Applicant admits as prior art (see paragraphs 3-6) that the amount of oxygen in the slurry is the rate limiting variable of the bioleaching process when conducted above 40°C.

Eppstein et al teach (see abstract) control means for adjusting the dissolved oxygen concentration in a bioreactor, which is measured by an oxygen sensor, that controls the oxygen content of the feed gas.

Therefore, it would have been obvious to one of ordinary skill in the art to have added the oxygen sensor and control means of Eppstein et al to the plant of Emmett, Jr et al because Applicant's admission teaches that dissolved oxygen controls the rate of the reaction and the oxygen sensor and control means of Eppstein et al can control the dissolved oxygen level to a desired high amount to facilitate the reaction.

Regarding claim 81, regarding the limitations that the reactor vessel is operated at temperature in excess of 60°C, the above limitations are not further limiting on the apparatus claim because the above limitation deals with the manner or method of use of the claimed apparatus. It has been well settled that the manner or method of use of an apparatus cannot be relied upon to further limit claims to the apparatus itself. See *In re Casey*, 152 USPQ 235, and MPEP 2114.

4. Claims 51-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emmett, Jr et al (US 5,007,620) in view of Applicant's admission of prior art and Eppstein et al (US 4,680,267) as applied to claims 50, 66-69, 71-73, 80 and 81 above, and further in view of Steemson et al (WO 94/28184).

Regarding claims 51-53, Emmett, Jr et al do not teach the steps of removing copper or iron from the bioleach residue before recovering zinc. However, Steemson et al teach (see fig. 1) a similar bioleach process that includes removing copper and iron from the bioleach residue before recovering zinc. It would have been obvious to one of ordinary skill in the art to have removed copper and iron from the bioleach residue in order to ensure a purer zinc product. Steemson et al teach (see fig. 1) removing the iron by adding limestone.

Regarding claims 54, 56, 57 and 58, Emmett, Jr et al do not teach the steps of subjecting the bioleach residue to a recovery process that includes zinc solvent extraction and zinc electrowinning to produce zinc cathodes. However, Steemson et al teach (see fig. 1) a similar bioleach process that includes a recovery process that includes zinc solvent extraction and zinc electrowinning to produce zinc cathodes. It would have been obvious to one of ordinary skill in the art to have performed the recovery process of Steemson et al in order to ensure a pure zinc product. Steemson et al also teach recycling the zinc raffinate to the bioleaching process. Steemson et al also teach including neutralizing acid (lime/limestone) in the raffinate to produce gypsum. This would inherently also produce CO<sub>2</sub> and precipitate co-leached iron.

Regarding claim 55, it would have been obvious to one of ordinary skill in the art to have recycled the oxygen generated during electrowinning to the bioleach reactor in order to avoid wasting pure oxygen to the atmosphere.

Regarding claim 59, it would have been obvious to one of ordinary skill in the art to have recycled the carbon dioxide generated during neutralizing to the bioleach reactor in order to avoid wasting pure carbon dioxide to the atmosphere.

Regarding claims 60, 61, 63 and 64, Emmett, Jr et al do not teach the steps of subjecting the bioleach residue to an electrowinning step to produce zinc cathodes. However, Steemson et al teach (see fig. 1) a similar bioleach process that includes an electrowinning step to produce zinc cathodes. It would have been obvious to one of ordinary skill in the art to have performed the electrowinning step of Steemson et al in order to ensure a pure zinc product. Steemson et al also teach recycling the spent electrolyte to a zinc oxide leach stage. Steemson et al also teach neutralizing the electrolyte with limestone to produce gypsum. This would inherently also produce CO<sub>2</sub> and precipitate co-leached iron.

Regarding claim 62, it would have been obvious to one of ordinary skill in the art to have recycled the oxygen generated during electrowinning to the bioleach reactor in order to avoid wasting pure oxygen to the atmosphere.

Regarding claim 65, it would have been obvious to one of ordinary skill in the art to have recycled the carbon dioxide generated during neutralizing to the bioleach reactor in order to avoid wasting pure carbon dioxide to the atmosphere.



5. Claims 70 and 74-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emmett, Jr et al (US 5,007,620) in view of Applicant's admission of prior art and Eppstein et al (US 4,680,267) as applied to claims 50, 66-69, 71-73, 80 and 81 above, and further in view of Hutchins et al (US 4,729,788).

Emmett, Jr. et al teach using mesophilic microorganisms for the bioleach process. Thus, Emmett, Jr. et al fail to meet the temperature range of 60-85°C or moderate thermophile microorganisms. Hutchins et al teach (see abstract and col. 3, line 52-col. 4, line 33) using thermophile microorganisms at 45-90°C for the decomposition of metal sulfide ores. Therefore, it would have been obvious to one of ordinary skill in the art to have substituted the thermophile microorganisms of Hutchins et al for the mesophilic microorganisms of Emmett, Jr. et al because the thermophiles have the advantage of being more heat resistant to withstand the exothermic bioleach process (see col. 2, lines 23-30). Hutchins et al teach (see col. 4, lines 8-15) using *acidophilic sulfolobus* species of bacterium.

### **Response to Arguments**

6. Applicant's arguments filed 22 September 2004 have been fully considered but they are not persuasive. Applicant has argued that:

- a. The discussion at paragraphs 3-6 should not be construed as an admission of prior art.

In response, it appears that the described information in paragraphs 3-6 of the present specification was already known to Emmett, Jr. et al because, as can be seen in figure 33, the oxygen concentration effects the oxidation rate of the sulfide, and as

such, was a known result effective variable in the prior art. Applicant did not disclose anything new in the admission.

- b. The present claims require more than 21 wt% oxygen as opposed to air which contains only 21 wt% oxygen.

In response, while it is true that the prior art teaches using air, which normally contains 21 wt% oxygen, this disclosure of the prior art is close enough to the presently claimed range that one of ordinary skill in the art would have expected the two to have the same properties and effects on the process. See MPEP 2144.05. In addition, it is possible for air to vary in composition, such that it would be possible to have air that happens to be slightly more enriched oxygen content which is above 21 wt%, if ever so slightly. Thus, the limitation that the feed gas contains more than 21 wt% oxygen does not make the claim patentable.

- c. The range of oxygen concentration of  $0.2$  to  $10.0 \times 10^{-3} \text{ kg/m}^3$  (which is 0.2 to 10 mg/L) produces unexpected results.

In response, there can be no unexpected results as the prior art discloses using oxygen concentrations within this range, as can be seen in figures 24 and 28, where the oxygen concentration varies from about 1 to about 5 mg/L. Thus, the prior art discloses oxygen concentrations within the presently claimed range.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry D Wilkins, III whose telephone number is 571-272-1251. The examiner can normally be reached on M-Th 10:00am-8:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy V King can be reached on 571-272-1244. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1742

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Harry D Wilkins, III  
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Art Unit 1742

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